



DEPARTMENT OF THE TREASURY

31 CFR Part 1

RIN: 1505-AC84

Privacy Act of 1974; Exempting a System of Records from Certain Requirements

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a proposed amendment to this part to exempt a new Internal Revenue Service (IRS) system of records entitled “IRS 34.018 Treasury/IRS Insider Risk Management Records” from certain provisions of the Privacy Act.

DATES: Comments must be received no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by docket number, Regulatory Information Number (RIN), and title, by any of the following methods:

Federal e-rulemaking portal <http://www.regulations.gov>. Follow the Instructions for making comments; or U.S. Mail: Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, Attention: Revisions to Privacy Act Systems of Records.

Instructions: For electronic submissions, type TREAS-DO-2024-0003 in the search field on the regulations.gov homepage to find this notice and submit comments. All submissions received must include the agency docket number or RIN. All comments received electronically or on paper will be posted without change to <http://www.regulations.gov>, including personal information provided.

Docket: For access to the docket to read background documents, or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Chief Risk Officer, Internal Revenue Service, Office of the Chief Risk Officer, Enterprise Risk Management, 1111 Constitution Ave NW, Washington, DC 20224-0002; telephone: (801) 612-4815.

SUPPLEMENTARY INFORMATION:

Under 5 U.S.C. 552a(k)(2) (31 CFR 1.36), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act if the system is investigatory material compiled for law enforcement purposes that is not within the scope of 5 U.S.C. 552a(j)(2) (which applies to agencies and components thereof that perform as their principal function any activity pertaining to the enforcement of criminal laws).

The IRS is hereby giving notice of a proposed rule to exempt “34.018, Treasury/IRS Insider Risk Management Records” from certain provisions of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2). The proposed exemptions are from sections 552a(c)(3), (d)(1)-(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. The following are the reasons this system of records maintained by the IRS may be exempted pursuant to 5 U.S.C. 552a(k)(2):

1. 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon their request. Any such accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. Applying this subsection could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of the IRS. Disclosure of an accounting would therefore present a serious impediment to the IRS, Treasury, and other law enforcement agencies by permitting the subject of record to impede investigations, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy. When an investigation has been completed, information on

disclosures made may continue to be exempted if the fact that an investigation occurred remains sensitive after completion.

2. 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. An exemption from these provisions is appropriate because providing access to such records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of the IRS or another bureau or agency. Access to the records could permit the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. In addition, permitting access to such information could disclose security-sensitive information that could be detrimental to the IRS. Agency rules are exempt from the individual access provisions of subsection 5 USC 552a for this system of records, therefore, the IRS and Treasury are not required to establish requirements, rules or procedures with respect to such access.

3. 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to them and require the agency to provide notice on how to request an amendment, and provide procedures for reviewing, making determinations and the appeal process concerning amendments. Because these provisions depend on the individual having access to their records, and since this rule exempts the IRS system of records from the provisions of 5 U.S.C. 552a relating to access to records for the reasons set forth above, these provisions do not apply. Furthermore, an exemption from this requirement is appropriate because allowing individuals to amend certain records that pertain to them would interfere with the mechanism of ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting amendment to such information could disclose security-sensitive information that could be detrimental to the IRS.

4. 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or Executive order. Maintenance of information, as defined in 5 U.S.C. 552a(a)(3), includes the collection and dissemination of information. An exemption from this provision is therefore appropriate because its application would require the IRS to make determinations at the time of collection about the relevance and necessity of collected information. Speculative determinations about the relevance and necessity of collected information may be impossible to determine immediately, as information that initially appears irrelevant and unnecessary, often may prove particularly valuable, therefore application of this provision to the system of records could impair the Department's ability to collect, utilize and disseminate valuable law enforcement information.

5. 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. An exemption from these provisions is appropriate because alerting individuals involved in illegal activity that the IRS has, or does not have, information that could lead to them being identified for investigation allows them to take steps to avoid detection, begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or destroy evidence needed to prove the violation, all of which could undermine the IRS's ability to carry out its mission.

6. 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the system of records could disclose investigative techniques and cause informants to refuse to give full information for fear their identities as sources could be disclosed, subjecting them to threats or reprisals. This could compromise the IRS's ability to complete or continue investigations or to share useful information to law enforcement agencies.

The IRS is also hereby giving notice of a proposed rule to exempt "34.018 Treasury/IRS Insider Risk Management Records" from certain provisions of the Privacy Act of 1974, pursuant

to 5 U.S.C. 552a(k)(5). The proposed exemptions are from provisions 552a(c)(3), (d)(1)-(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) because the system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.. The following are the reasons this system of records maintained by the IRS may be exempted pursuant to 5 U.S.C. 552a(k)(5):

1. The sections of 5 U.S.C. 552a from which the systems of records are exempt generally provide for individuals' access to or amendment of records. Such access may reveal the identity of a confidential source under an express promise that the source's identity would be held in confidence. This could hinder the IRS's ability to obtain future confidential sources. In addition, 5 U.S.C. 552a(e)(1) is unduly restrictive in requiring the IRS to maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency as required by a statute or executive order, since it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

2. IRS claims the exemptions 5 U.S.C. 552a(j)(2) and (k)(2) if any investigatory material contained in the above-named system becomes involved in criminal or civil matters.

Procedural Matters

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis. The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby certified that these regulations will not have a significant economic impact on a

substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

The Department of the Treasury proposes to amend part 1 of title 31 of the Code of Federal Regulations as follows:

PART 1--DISCLOSURE OF RECORDS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 301, 321; 31 U.S.C. 3717.

2. Amend § 1.36 by:

a. In paragraph (g)(1)(vii), adding an entry to table 16 to paragraph (g)(1)(vii) in alpha-numeric order; and

b. In paragraph (k)(1)(iii), adding an entry to table 23 to paragraph (k)(1)(iii) in alpha-numeric order.

The additions read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of the Privacy Act and this part.

* * * * *

(g) * * *

(1) * * *

(vii) *Internal Revenue Service.*

Table 16 to Paragraph (g)(1)(vii)

No.	Name of system
* *	* * * * *

IRS 34.018	Treasury/IRS Insider Risk Management Records
* *	* * * * *

* * * * *

(k) * * *

(1) * * *

(iii) Internal Revenue Service.

Table 23 to Paragraph (k)(1)(iii)

No.	Name of system
IRS 34.018	Treasury/IRS Insider Risk Management Records
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Ryan Law,

Deputy Assistant Secretary Privacy, Transparency, and Records,

U.S. Department of the Treasury.